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**In the Supreme Court of the United States**

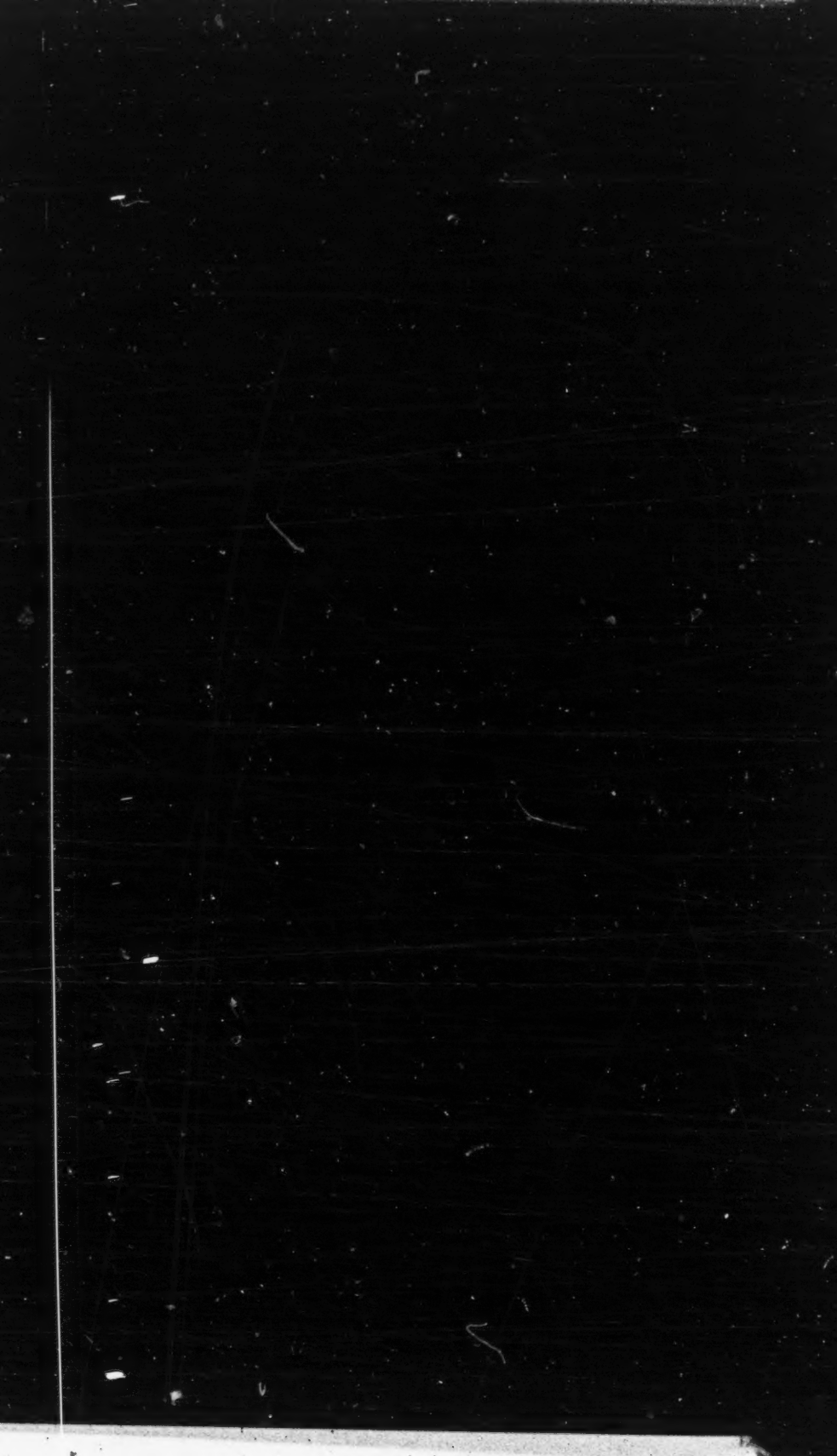
**OCTOBER TERM, 1937**

**UNITED STATES OF AMERICA, PETITIONER**

**v.**

**CONTINENTAL NATIONAL BANK AND TRUST COMPANY,  
A CORPORATION, TRUSTEE UNDER THE LAST WILL  
AND TESTAMENT OF JAMES DUGGAN, DECEASED,  
ET AL.**

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SEV-  
ENTH CIRCUIT**



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# In the Supreme Court of the United States

OCTOBER TERM, 1937

No. 934

UNITED STATES OF AMERICA, PETITIONER

v.

CONTINENTAL NATIONAL BANK AND TRUST COMPANY,  
A CORPORATION, TRUSTEE UNDER THE LAST WILL  
AND TESTAMENT OF JAMES DUGGAN, DECEASED,  
ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE SEV-  
ENTH CIRCUIT :

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above cause on January 5, 1938, affirming the judgment of the United States District Court for the Northern District of Illinois, Eastern Division.

## OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 32) is reported in 94 F. (2d) 81. The District Court did not file a written opinion.

(1)

**JURISDICTION**

The judgment of the Circuit Court of Appeals was entered January 5, 1938 (R. 37). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

**QUESTIONS PRESENTED**

1. Whether the limitations period provided by Section 311 (b) (2) of the Revenue Act of 1928 is applicable in a proceeding to collect from the representatives of a deceased transferee of the taxpayer the amount of the transferee's liability for taxes imposed by earlier Revenue Acts.
2. Whether this action was barred by any applicable provision of the Revenue Act of 1926.

**STATUTES INVOLVED**

The pertinent statutes involved are printed in the Appendix, *infra*, pp. 18-27.

**STATEMENT**

This is a suit in equity, brought by the petitioner in the United States District Court for the Northern District of Illinois, Eastern Division, against the Continental National Bank and Trust Company, as trustee under the will of James Duggan, deceased, to collect the sum of \$295,331.64, with interest as provided by law, representing the amount of the liability of James Duggan, deceased, for unpaid Federal income and profits taxes.



amounting to \$316,620.61 due from Johnston City & Big Muddy Coal & Mining Company, a dissolved Illinois corporation, for the calendar year 1920. The other defendants named in the bill of complaint are beneficiaries of the testamentary trust created by the decedent.

The defendants moved to dismiss the petitioner's bill of complaint for the following reasons (R. 17-18):

1. The bill of complaint herein fails to state facts sufficient to constitute a cause of action in favor of plaintiff against these defendants or against any of them.

2. The bill of complaint herein fails to state facts sufficient to constitute a cause of action in equity in favor of plaintiff against these defendants or against any of them.

3. If plaintiff ever had any cause of action against these defendants or against any of them by reason of the allegations of the bill of complaint herein, it appears from said bill of complaint that such cause of action was for the collection of an income and profits tax of the Johnston City and Big Muddy Coal and Mining Company for the calendar year 1920, that said company filed its income and profits tax return on May 16, 1921; that thereafter a deficiency in said tax was assessed against said company in January 1925; and that this cause cannot be maintained by plaintiff by reason of the bar of the statute of limitations contained in the provisions of section 278 of the Revenue Act of 1926 as amended.

4. If the plaintiff ever had any cause of action against these defendants or against any of them by reason of the allegations of the bill of complaint herein, it appears from said bill of complaint that this suit cannot be maintained by plaintiff by reason of the bar of the statute of limitations contained in the provisions of section 277 of the Revenue Act of 1926 as amended.

5. If the plaintiff ever had any cause of action against these defendants or against any of them by reason of the allegations of the bill of complaint herein, it appears from said bill of complaint that this suit cannot be maintained by plaintiff by reason of the bar of the statute of limitations contained in the provisions of section 280 of the Revenue Act of 1926 as amended.

6. If the plaintiff ever had any cause of action against these defendants or against any of them by reason of the allegations of the bill of complaint herein, it appears from said bill of complaint that this suit cannot be maintained by plaintiff by reason of the bar of the statute of limitations contained in the provisions of section 311 (b) of the Revenue Act of 1928.

7. If the plaintiff ever had any cause of action against these defendants or against any of them by reason of the allegations of the bill of complaint herein, it appears from said bill of complaint that this suit cannot be maintained by plaintiff by reason of the bar contained in the applicable statute of limitations.



Before the defendants' motion to dismiss was acted upon by the District Court the petitioner's original bill of complaint (R. 2-15) was amended by leave of court (R. 20-22) to include the additional allegation of fact that on February 14, 1931, the Commissioner of Internal Revenue made a jeopardy assessment against James Duggan, deceased, in the sum of \$295,331.64 representing the amount redetermined by the Board of Tax Appeals as his liability for unpaid taxes due from the Johnston City & Big Muddy Coal & Mining Company. The defendants' motion to dismiss was thereupon renewed (R. 19-20). Briefs were thereafter submitted to the District Court by both parties but oral argument was not heard. On March 22, 1937, the District Court entered an order, without written opinion, dismissing the petitioner's bill of complaint (R. 22-23). The order of dismissal was affirmed by the Circuit Court of Appeals for the Seventh Circuit in an opinion filed January 5, 1938 (R. 32).

The bill of complaint (R. 2-15), as amended (R. 20-22), shows that James Duggan, deceased, was, during the years 1919 and 1920, the principal owner and stockholder of Johnston City & Big Muddy Coal & Mining Company, an Illinois corporation engaged in the business of mining and selling coal; and that the Johnston City & Big Muddy Coal & Mining Company owned a subsidiary corporation organized under the laws of Illinois and known as the Johnston City Coal Company (R. 4).

For the calendar year 1920, the Johnston City & Big Muddy Coal & Mining Company filed a consolidated income and profits tax return which included the income and deductions of Johnston City Coal Company. A tax of \$5,269.21 shown thereon to be due was paid (R. 4).

Upon auditing the return filed by Johnston City & Big Muddy Coal & Mining Company for 1920 the Commissioner of Internal Revenue found that the income of the company had been grossly understated, and that there was due from the company an additional tax for 1920 in the sum of \$316,620.61. A statutory deficiency notice under Section 274 (a) of the Revenue Act of 1924 was mailed to the company under date of December 16, 1924, notifying it of this proposed deficiency. No appeal from this notice was taken to the Board of Tax Appeals by the company. The amount of this deficiency was assessed against the company by the Commissioner on his January 1925 list but no part of the assessment has ever been paid (R. 5).

During 1920 and 1921 the Johnston City & Big Muddy Coal & Mining Company was in process of liquidation. Its assets were converted into cash and commercial securities under the direction of James Duggan, and as a stockholder in the company he received and kept in his possession assets of the corporation to the amount of \$295,331.64 which were converted to his own use and purposes without payment or rendering value therefor in re-

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turn, and without paying or discharging the obligation of the company to the Government of the United States for the unpaid income and profits taxes assessed against it for the year 1920 (R. 5).

The Johnston City & Big Muddy Coal & Mining Company was dissolved December 29, 1921, and was left without assets available to pay the taxes assessed against it in January 1925. Thereupon the Commissioner, by a registered letter dated April 15, 1926, notified James Duggan that under the provisions of Section 280 of the Revenue Act of 1926 there was proposed for assessment against him the sum of \$295,331.64, constituting his liability at law or in equity as a transferee of the assets of Johnston City & Big Muddy Coal & Mining Company for the unpaid taxes assessed against the company (R. 20-21).

Upon receipt of this notice James Duggan filed an appeal with the United States Board of Tax Appeals, issue was joined, and the appeal came on for hearing in due course. On January 6, 1930, the Board promulgated its findings of fact and opinion. On January 27, 1931, it entered its decision in the appeal of James Duggan wherein his liability as transferee for income and profits taxes of Johnston City & Big Muddy Coal & Mining Company for the year 1920 was fixed at \$295,331.64, with interest thereon as provided by law from December 6, 1924. No appeal was taken from the decision of the Board within the time provided by law and the de-

cision became final six months thereafter (R. 15, 20-21). See 18 B. T. A. 608.

On February 14, 1931, the Commissioner of Internal Revenue made a jeopardy assessment against James Duggan, deceased, under authority of Section 279 of the Revenue Act of 1926 in the sum of \$404,992.73, representing the amount redetermined by the Board of Tax Appeals to be his liability as transferee of the assets of Johnston City & Big Muddy Coal & Mining Company plus interest thereon in the sum of \$109,661.09 (R. 21).

James Duggan died testate in March 1929, leaving an estate worth approximately \$1,500,000 after payment of administration expenses and claims other than the claim of the Government for the above \$295,331.64, plus interest. Michael Duggan, who was named executor in his will, had died previously, and the Biscayne Trust Company, of Miami, Florida, was duly appointed and qualified as executor. The Biscayne Trust Company became financially involved and was placed in the hands of a receiver, and was formally dismissed as such executor. Thereafter Lee C. Robinson was appointed and qualified as administrator d. b. n. c. t. a. on September 15, 1930 (R. 4, 7).

Lee C. Robinson, while having actual notice and knowledge of the claim against James Duggan, deceased, distributed to Henry Duggan, one of the defendants named in the bill of complaint, the sum

of \$50,000 pursuant to the terms of James Duggan's will, and distributed to the Continental National Bank & Trust Company, as testamentary trustee, all of the rest and residue of the estate of James Duggan, deceased. The Continental National Bank & Trust Company, as trustee under the will of James Duggan, now has in its possession the entire corpus of the estate of James Duggan distributed to it as such testamentary trustee (R. 7-8).

No part of the obligation of James Duggan, deceased, as established by the Board of Tax Appeals has ever been paid (R. 21).

In affirming the order of dismissal, the Circuit Court of Appeals held that the six-year period provided by Section 278 (d) of the 1926 Act for collection, following a timely assessment, from the original taxpayer was not made applicable by Section 280 (a) of that Act to a proceeding, following a timely assessment, for collection from a transferee. Apparently considering that the 1926 Act provided no limitations period for such proceedings, the court held that this hiatus had been filled by the Revenue Act of 1928. Applying Section 311 (b) (2) of that Act, it held that this suit was barred since it had not been brought within three years after expiration of the period for assessment against the original taxpayer.



### **SPECIFICATION OF ERRORS TO BE URGED**

The Circuit Court of Appeals erred:

1. In holding that this action was barred by the provisions of Section 311 (b) of the Revenue Act of 1928 at the time it was instituted, and in affirming the judgment of the District Court on that ground.

2. In holding that this action was barred by any applicable statute of limitations at the time it was instituted.

3. In failing to hold that this action was timely brought within the period of limitation properly applicable.

4. In affirming the judgment of the District Court dismissing this action.

### **REASONS FOR GRANTING THE WRIT**

1. The court below held that this action is barred by the provisions of Section 311 (b) (2) of the Revenue Act of 1928. In so holding the court based its decision upon a provision of law which upon its face, is clearly inapplicable to the facts in this case. In this respect the decision is contrary to the decision of the Board of Tax Appeals in *Hoosac Mills Corp. v. Commissioner*; 29 B. T. A. 1057, reversed on another issue, 75 F. (2d) 462 (C. C. A. 1st), which is the only other case passing upon this question. This is a proceeding to collect a sum representing the liability of James Duggan, deceased, for income and profits taxes due for the

taxable year 1920. Section 311 of the Revenue Act of 1928 is a part of Title I of that Act. Section 1 of the Act specifically provides that the provisions of Title I "shall apply only to the taxable year 1928 and succeeding taxable years." Section 311 applies specifically to the liability of a transferee "in respect of the tax \* \* \* imposed upon the taxpayer by this title." Accordingly, the period of limitations applicable to suits to collect the liability of transferees for taxes imposed for prior years must be found elsewhere.

Section 311 (b) (2) of the Revenue Act of 1928 is not applicable to this proceeding for the further reason that it prescribes a new period for *assessment* against a *transferee of a transferee* while the instant action is a proceeding in court to *collect* from the assets of his estate now held by the Continental National Bank & Trust Company, as testamentary trustee, the liability of the *initial* transferee which has already been redetermined by the Board of Tax Appeals and *assessed* by the Commissioner. The suit is brought against the trustee in its representative capacity, and does not seek to subject the trustee to liability as transferee of a transferee. See Section 281 (b) of the Revenue Act of 1926. In treating this action as an action against a transferee of a transferee, and in basing its decision upon a provision of law which is clearly inapplicable to the facts alleged, the court below has reached a result which clearly is erroneous and

which is inconsistent with a proper application of the applicable provisions of law and supporting authorities.

2. The provisions of law properly applicable to this proceeding are contained in the Revenue Act of 1926. The time prescribed by that Act had not expired when this proceeding was begun.

The 1920 income tax return of the Johnston City & Big Muddy Coal & Mining Company was filed May 16, 1921, and the Commissioner of Internal Revenue had five years, or until May 16, 1926, within which to make an assessment against the company. Section 277 (a) (3) of the 1926 Act. He made an assessment against the company in January 1925 in the amount of \$316,620.61, but this is immaterial and may be ignored, because under Section 280 (b) (1) of the 1926 Act he had one year after expiration of the period for assessment against the company, or until May 16, 1927, within which to assess the liability of transferees of the company. The fact that the company had been dissolved in the meantime did not interrupt this period. Section 280 (c) of the 1926 Act.

On April 15, 1926, prior to the expiration of the period for assessment against the company, and thirteen months and one day prior to expiration of the period for assessment against transferees of the company, the Commissioner mailed a transferee notice to James Duggan pursuant to Section 280 (a) of the Revenue Act of 1926, from which a

timely appeal was taken to the Board of Tax Appeals. After issuance of the transferee notice, and since an appeal was filed, the Commissioner was prohibited by Section 274 (a) of the 1926 Act from making an assessment against James Duggan, except in case of jeopardy, and also from bringing a proceeding against him for collection, until the decision of the Board became final.

The running of the period of limitation upon assessment against Duggan was "suspended" by Section 280 (d) of the 1926 Act, as amended by Section 505 (a) of the 1928 Act, for the period during which the Commissioner was prohibited by Section 274 (a) from assessing or attempting to collect from James Duggan, and for 60 days thereafter. This is true regardless of whether the Board lost jurisdiction of the proceeding pending before it at the time of James Duggan's death because of the failure to substitute his personal representatives. See *American Equitable Assur. Co. of New York v. Helvering*, 68 F. (2d) 46 (C. C. A. 2d); and *USL Battery Corp. v. Commissioner*, 84 F. (2d) 1020, affirming 32 B. T. A. 810.

The Board's decision was entered January 27, 1931, and became final on July 27, 1931. Section 1005 (a) of the Revenue Act of 1926. The period of "suspension" of the statute of limitations, under Section 280 (d) of the Revenue Act of 1926, continued for 60 days thereafter, or until September 25, 1931. When this period of "suspension" came

to an end, there remained an unexpired period of thirteen months and one day within which the Commissioner might make an assessment against James Duggan as a transferee, or might institute a proceeding against him or his representatives for collection without assessment. That Section 280 (d) of the Revenue Act of 1926 does thus operate to "suspend" the running of the limitation period so as to permit utilization, after the suspension has terminated, of that portion of the limitation period which remained when the transferee notice was mailed, is clear from the plain language of the statute. It was so held in *Continental Oil Co. v. United States*, 14 F. Supp. 533 (C. Cls.), certiorari denied, 299 U. S. 510. The present proceeding was brought on May 6, 1932. It was, therefore, clearly timely whether viewed as a proceeding for collection after assessment or as one for collection without assessment.

3. (a) Even if the interpretation of the statute adopted in the *Continental Oil Co.* case, *supra*, be incorrect, the present suit was timely. The suspension authorized by Sections 277 (b) and 280 (d) of the Revenue Act gave the Commissioner at least until 60 days after July 27, 1931—namely, until September 25, 1931—within which to make an assessment against James Duggan. A jeopardy assessment, under authority of Section 279 (a) and (d) of the Revenue Act of 1926, was made against James Duggan, deceased, on February 14,



1931. This assessment, being made within the assessment period as extended by the Board proceeding, clearly was in time. The fact that James Duggan had died prior to the date on which this assessment was made does not preclude the Commissioner from bringing a proceeding for collection against the representatives of his estate within that period. Assessments are frequently made by the Commissioner after a dissolution of a corporation (*United States v. Updike*, 281 U. S. 489), or after the death of an individual. *Muir v. United States*, 3 F. Supp. 619 (C. Cls.); *Anderson v. United States*, 15 F. Supp. 216, certiorari denied, 300 U. S. 675; and *Anderson v. United States*, 15 F. Supp. 225 (C. Cls.). See, also, *Anderson v. Bass*, 88 F. (2d) 185 (C. C. A. 5th). The courts have never for that reason held assessments ineffective for purposes of the statute of limitations.

(b) The assessment having been made in time, the Commissioner had six years from the date of that assessment, or until February 14, 1937, within which to collect by distraint or by a proceeding in court under Section 278 (d) of the 1926 Act. The court below clearly erred in holding that the six-year collection period provided by this section should not be read into Section 280 of the 1926 Act. Its decision in this respect is in substantial conflict with the decisions of this Court in *United States v. Updike*, 281 U. S. 489, and *Helvering v. Newport Co.*, 291 U. S. 485. Section 280 (a) of the

1926 Act provides that the amounts of the liabilities therein dealt with—

\* \* \* shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including \* \* \* the provisions authorizing distraint and proceedings in court for collection, \* \* \*

This provision authorizes collection of a transferee liability by distraint or a proceeding in court if brought within six years after assessment of the liability. *United States v. Updike, supra*, was a suit by the Government against transferees to collect taxes due from a dissolved corporation for the year 1917. No return for the period involved had been filed by the corporation prior to its dissolution. In October 1918, a revenue agent examined the books of the corporation and made a return in regular form which apparently was sufficient to start the running of the statutory period for assessment. In January, 1920, an additional tax was assessed against the company. The suit was brought against transferees of the company in 1927, more than six years later, to collect the amount of that assessment. This Court held the six-year period provided in Section 278 (d) of the 1926 Act to be applicable to the facts of that case.

*Helvering v. Newport Co., supra*, was a proceeding under Section 280 of the Revenue Act of 1926

to collect from the transferee of a dissolved corporation its liability for taxes due from the dissolved corporation for the taxable year 1917. In that case this Court held that the applicable limitations provisions contained in Sections 277 and 278 of the 1926 Act were by Section 280 (a) of the Act made applicable to proceedings against transferees under the latter section. Under that decision the provisions of Section 278 (d) of the 1926 Act, as amended, are clearly applicable to any proceeding in court to collect the amount redetermined by the Board of Tax Appeals and assessed against James Duggan, deceased, as his liability under Section 280 of the Act.

In this respect the decision below also appears to be in conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit in *City Nat. Bank v. Commissioner*, 55 F. (2d) 1073, certiorari denied, 286 U. S. 561.

4. The decision of the court below is such that it casts grave doubt upon questions of law which are of substantial importance in the administration of the revenue.

#### CONCLUSION

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be granted.

ROBERT H. JACKSON,  
Solicitor General.

APRIL 1938.

## APPENDIX

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 274. (a) If in the case of any taxpayer, the Commissioner determines that there is a deficiency in respect of the tax imposed by this title, the Commissioner is authorized to send notice of such deficiency to the taxpayer by registered mail. Within 60 days after such notice is mailed (not counting Sunday as the sixtieth day), the taxpayer may file a petition with the Board of Tax Appeals for a redetermination of the deficiency. Except as otherwise provided in subdivision (d) or (f) of this section or in section 279, 282, or 1001, no assessment of a deficiency in respect of the tax imposed by this title and no distraint or proceeding in court for its collection shall be made, begun, or prosecuted until such notice has been mailed to the taxpayer, nor until the expiration of such 60-day period, nor, if a petition has been filed with the Board, until the decision of the Board has become final. Notwithstanding the provisions of section 3224 of the Revised Statutes the making of such assessment or the beginning of such proceeding or distraint during the time such prohibition is in force may be enjoined by a proceeding in the proper court.

(b) If the taxpayer files a petition with the Board, the entire amount redetermined as the deficiency by the decision of the Board which has become final shall be assessed and shall be paid upon notice and demand from the collector. No part of the amount determined as a deficiency by the Commissioner

but disallowed as such by the decision of the Board which has become final shall be assessed or be collected by distraint or by proceeding in court with or without assessment.

SEC. 277. (a) Except as provided in section 278—

(3) The amount of income, excess-profits, and war-profits taxes imposed by the Act entitled "An Act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes," approved August 5, 1909, the Act entitled "An Act to reduce tariff duties and to provide revenue for the Government, and for other purposes," approved October 3, 1913, the Revenue Act of 1916, the Revenue Act of 1917, the Revenue Act of 1918, and by any such Act as amended, shall be assessed within five years after the return was filed, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period.

(b) The running of the statute of limitations provided in this section or in section 278 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 274) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court, and for 60 days thereafter.

SEC. 278. (d) Where the assessment of any income, excess-profits, or war-profits tax imposed by this title or by prior Act of Con-



gress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer.

SEC. 280. (a) The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provisions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this title or by any prior income, excess-profits, or war-profits tax Act.

(2) The liability of a fiduciary under section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the taxpayer. Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) Within one year after the expiration of the period of limitation for assessment against the taxpayer; or

(2) If the period of limitation for assessment against the taxpayer expired before the enactment of this Act but assessment against the taxpayer was made within such period,—then within six years after the making of such assessment against the taxpayer, but in no case later than one year after the enactment of this Act.

(3) If a court proceeding against the taxpayer for the collection of the tax has been begun within either of the above periods,—then within one year after return of execution in such proceeding.

(c) For the purposes of this section, if the taxpayer is deceased, or in the case of a corporation, has terminated its existence, the period of limitation for assessment against the taxpayer shall be the period that would be in effect had the death or termination of existence not occurred.

(d) The running of the period of limitation upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 274 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary, and for 60 days thereafter.

(e) This section shall not apply to any suit or other proceeding for the enforcement of the liability of a transferee or fiduciary pending at the time of the enactment of this Act.

(f) As used in this section, the term "transferee" includes heir, legatee, devisee, and distributee.

**SEC. 281.** (a) Upon notice to the Commissioner that any person is acting in a fiduciary capacity such fiduciary shall assume the powers, rights, duties, and privileges of the taxpayer in respect of a tax imposed by this title or by prior income, excess-profits, or war-profits tax Act (except as otherwise specifically provided and except that the tax shall be collected from the estate of the taxpayer), until notice is given that the fiduciary capacity has terminated.

(b) Upon notice to the Commissioner that any person is acting in a fiduciary capacity for a person subject to the liability specified in section 280, the fiduciary shall assume, on behalf of such person, the powers, rights, duties, and privileges of such person under such section (except that the liability shall be collected from the estate of such person), until notice is given that the fiduciary capacity has terminated.

(c) Notice under subdivision (a) or (b) shall be given in accordance with regulations prescribed by the Commissioner with the approval of the Secretary.

(d) In the absence of any notice to the Commissioner under subdivision (a) or (b), notice under this title of a deficiency or other liability, if mailed to the taxpayer or other person subject to liability at his last known address, shall be sufficient for the purposes of this title even if such taxpayer or other person is deceased, or is under a legal disability, or, in the case of a corporation, has terminated its existence.

**SEC. 1109.** (a) Except as provided in sections 277, 278, 310, and 311—

(3) Where the assessment of any tax imposed by this Act or by prior Act of Con-

gress has been made (whether before or after the enactment of this Act) within the statutory period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (A) within six years after the assessment of the tax, or (B) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer (U. S. C., Title 26, Section 1432).

Revenue Act of 1928, c. 852, 45 Stat. 791:

## TITLE I. INCOME TAX

### SUBTITLE A. INTRODUCTORY PROVISIONS

#### SEC. 1. APPLICATION OF TITLE.

The provisions of this title shall apply only to the taxable year 1928 and succeeding taxable years. Income, war-profits, and excess-profits taxes for taxable years preceding the taxable year 1928 shall not be affected by the provisions of this title, but shall remain subject to the applicable provisions of prior revenue Acts, except as such provisions are modified by Titles III, IV, and V of this Act or by legislation enacted subsequent to this Act.

#### SEC. 311. TRANSFERRED ASSETS.

(a) *Method of collection.*—The amounts of the following liabilities shall, except as hereinafter in this section provided, be assessed, collected, and paid in the same manner and subject to the same provisions and limitations as in the case of a deficiency in a tax imposed by this title (including the provisions in case of delinquency in payment after notice and demand, the provi-

sions authorizing distraint and proceedings in court for collection, and the provisions prohibiting claims and suits for refunds):

(1) *Transferees*.—The liability, at law or in equity, of a transferee of property of a taxpayer, in respect of the tax (including interest, additional amounts, and additions to the tax provided by law) imposed upon the taxpayer by this title.

(2) *Fiduciaries*.—The liability of a fiduciary under section 3467 of the Revised Statutes in respect of the payment of any such tax from the estate of the taxpayer.

Any such liability may be either as to the amount of tax shown on the return or as to any deficiency in tax.

(b) *Period of limitation*.—The period of limitation for assessment of any such liability of a transferee or fiduciary shall be as follows:

(1) In the case of the liability of an initial transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the taxpayer;

(2) In the case of the liability of a transferee of a transferee of the property of the taxpayer,—within one year after the expiration of the period of limitation for assessment against the preceding transferee, but only if within three years after the expiration of the period of limitation for assessment against the taxpayer;

except that if before the expiration of the period of limitation for the assessment of



the liability of the transferee, a court proceeding for the collection of the tax or liability in respect thereof has been begun against the taxpayer or last preceding transferee, respectively,—then the period of limitation for assessment of the liability of the transferee shall expire one year after the return of execution in the court proceeding.

(3) In the case of the liability of a fiduciary,—not later than one year after the liability arises or not later than the expiration of the period for collection of the tax in respect of which such liability arises, whichever is the later.

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### TITLE III. AMENDMENTS TO 1926 INCOME TAX

#### SEC. 504. SUSPENSION OF RUNNING OF STATUTE OF LIMITATIONS.

(a) Section 277 (b) of the Revenue Act of 1926 is amended to read as follows:

“(b) The running of the statute of limitations provided in this section or in section 278 on the making of assessments and the beginning of distraint or a proceeding in court for collection, in respect of any deficiency, shall (after the mailing of a notice under subdivision (a) of section 274) be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or a proceeding in court (and in any event, if a proceeding in respect of the deficiency is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.”

(b) Subsection (a) of this section shall apply in all cases where the period of limi-

tation has not expired prior to the enactment of this Act.

**SEC. 505. SAME—TRANSFEE CASES.**

(a) Section 280 (d) of the Revenue Act of 1926 is amended to read as follows:

“(d) The running of the statute of limitations upon the assessment of the liability of a transferee or fiduciary shall, after the mailing of the notice under subdivision (a) of section 274 to the transferee or fiduciary, be suspended for the period during which the Commissioner is prohibited from making the assessment in respect of the liability of the transferee or fiduciary (and in any event, if a proceeding in respect of the liability is placed on the docket of the Board, until the decision of the Board becomes final), and for 60 days thereafter.”

(b) Subsection (a) of this section shall apply in all cases where the period of limitation has not expired prior to the enactment of this Act.

**SEC. 506. WAIVERS AFTER EXPIRATION OF PERIOD OF LIMITATION.**

(a) Section 278 (c) and (d) of the Revenue Act of 1926 are amended to read as follows:

“(c) Where before the expiration of the time prescribed in section 277 for the assessment of the tax, both the Commissioner and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

“(d) Where the assessment of any income, excess-profits, or war-profits taxes

imposed by this title or by prior Act of Congress has been made (whether before or after the enactment of this Act) within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court (begun before or after the enactment of this Act), but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such six-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon."